

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6386**

**BILL NUMBER:** HB 1053

**NOTE PREPARED:** Apr 2, 2013

**BILL AMENDED:** Apr 1, 2013

**SUBJECT:** Sex Offender Registration.

**FIRST AUTHOR:** Rep. Steuerwald

**BILL STATUS:** As Passed Senate

**FIRST SPONSOR:** Sen. Steele

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Public Portal* – It requires the Department of Correction to remove from the public portal of the sex offender registry the information relating to a sex or violent offender who is deceased or no longer required to register.
- B. *Kidnaping or Criminal Confinement* – It requires persons convicted of kidnaping or criminal confinement to register if the victim is less than 18 years of age, unless a court finds that the offense was not committed for a sexual purpose.
- C. *Vehicle Identification Number* – It adds the vehicle identification number of the vehicle owned or regularly operated by the offender to the information required for sex offender registration, requires an offender to report certain information changes within 72 hours, and provides that an offender's driver's license or identification card must contain the offender's current address and physical description.
- D. *Registration Requirements* – It provides that an offender who is scheduled to move must register in the appropriate location within 72 hours.
- E. *Contacting Offenders by Mail* – It removes the requirement that a local law enforcement authority contact offenders by mail and permits local law enforcement authorities to contact the offenders in a manner approved by the Department of Correction.
- F. *Child Pornography and Distribution of Obscene Matter* – It makes it possession of child pornography, a Class D felony, for a person to knowingly or intentionally possess certain items that: (1) depict or describe sexual conduct by a child who the person knows is less than 18 years of age (current law is 16 years of age) or who appears to be less than 18 years of age (current law is 16 years

of age); and (2) lacks serious literary, artistic, political, or scientific value. It makes knowingly or intentionally: (1) sending or bringing into Indiana obscene matter for sale or distribution; or (2) offering to distribute, distributing, or exhibiting to another person obscene matter; a Class D felony instead of a Class A misdemeanor if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under 18 years of age. It makes knowingly or intentionally engaging in, participating in, managing, producing, sponsoring, presenting, exhibiting, photographing, filming, or videotaping any obscene performance a Class D felony instead of a Class A misdemeanor if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under 18 years of age.

- G. *Rape and Criminal Deviate Conduct* – It merges the offense of criminal deviate conduct into the crime of rape and repeals the criminal deviate conduct statute. It makes conforming amendments and technical corrections.
- H. *Sexual Assault Victims Fee* – It increases the sexual assault victims fee to a range between \$500 and \$5,000 (under current law, the fee ranges from \$250 to \$1,000). It adds: (1) promotion of human trafficking; (2) promotion of human trafficking of a minor; (3) sexual trafficking of a minor; and (4) human trafficking; to the offenses for which a convicted individual is required to pay the sexual assault victims fee.
- I. It makes conforming amendments and technical corrections.

(The introduced version of this bill was prepared by the Criminal Law and Sentencing Policy Study Committee).

**Effective Date:** July 1, 2013; July 1, 2014.

**Explanation of State Expenditures:** *Vehicle Identification Numbers and Registration Requirements* – Persons who are on the registry and fail to comply with these additional requirements would commit either a Class D felony as a first-time offense or a Class C felony if the offender has a prior offense.

Class D felonies are punishable by a prison sentence of between six months and three years, while Class C felonies are punishable by prison sentences of between two and eight years.

The number of sex offenders who have been committed to the Department of Correction (DOC) for failing to register as a sex offender as a new crime has increased from 79 in 2007 to 143 in 2011.

<b>Offenders Committed to DOC for Failure to Register as a Sex Offender as a New Crime By Calendar Year</b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Class C</b>	6	16	31	39	58
<b>Class D</b>	73	56	98	93	85
<b>Total</b>	79	72	129	132	143

*Contacting Offenders by Mail* – DOC would be required to approve a method of contacting persons who are registered on the Sex and Violent Offender Registry. The Indiana Sheriffs Association indicates that counties could use an automated email/phone notification via the OffenderWatch software program called "Active Contact". In this arrangement, all offenders would receive both an automated phone call and an email seven days prior to their next registration date. The funding for the contract with OffenderWatch is paid with a federal grant

that expires on June 30, 2013.

*Child Pornography* – A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

*Rape and Criminal Deviate Conduct* – Courts already treat same-sex incidents as criminal deviate conduct. Criminal deviate conduct is defined in statute as causing another person to submit to deviate sexual conduct by force, the threat of force, or if the other person is so mentally disabled or deficient that the person is unable to give consent (IC 35-42-4-2). Deviate sexual conduct is defined in statute as an act involving a sex organ of one person and the mouth or anus of another person or the penetration of the sex organ or anus of a person by an object (IC 35-31.5-2-94). As proposed, crimes involving forced deviate sexual conduct would now be treated as rape.

**Explanation of State Revenues:** *Sexual Assault Victims Fee* – The increased fee and the new offenses for which this fee applies could increase the revenue that would be deposited into the Sexual Assault Victims Assistance Fund. Past collections from this fee have ranged between \$19,555 and \$80,000 for the past five fiscal years. Depending on the ability of the convicted offender to pay the added fee, this bill would increase future revenues.

**Explanation of Local Expenditures:** *Kidnaping or Criminal Confinement* – The number of offenders who are on the Sex and Violent Offender Registry may be reduced and offenders who are currently confined to DOC facilities for kidnaping or criminal confinement may not be required to register in future years when they are released, depending on court findings.

These offenders would likely file civil actions, requesting the court to specify that the person is not a sex or violent offender. Since most offenders are indigent, it is unlikely that the court will receive any court fee revenue to recover any costs related to these hearings.

In October 2012, 139 offenders were on the Sex and Violent Offender Registry, and 183 offenders were in DOC facilities on November 1, 2012, who were sentenced for either criminal confinement or kidnaping as their most serious crime and have an earliest possible release date before December 31, 2018. None of the offenders confined to DOC facilities were sentenced for any additional crimes that were sex crimes.

*Contacting Offenders by Mail* – If local law enforcement agencies would use electronic mail to contact persons on the sex and violent offender registry, the counties may be able to save the cost of mail. LSA estimates minimal savings for all 92 counties of \$6,600 for the cost of first class stamps.

**Background** – In October 2012, DOC reported that 9,133 persons were in the Sex and Violent Offender Registry.

Sex and Violent Offender Registry October 2012							
Awaiting Classification	No Classification	Offender Against Children	Pending Court Order	Sex Offender	Sexually Violent Predator	Violent Offender	Grand Total
49	35	3,828	8	3,338	1,856	19	9,133

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** County sheriffs; Local law enforcement agencies.

**Information Sources:** Brent Myers, Department of Correction; DOC Offender Information System; Jeff Shimkus, Detective, Allen County Sheriffs Department

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.